Scott. II-37—

Law (Jewel) (1935) Department

Miscellaneous SERIES.

G.O. No.

DATED

[Despatch Abstract.]

Law (General) DEPARTMENT. C.F. 81

CURRENT No.

Received ..... 192 Registered L.G. 201/B 192
30-11-35

ASSISTANT SECRETARY TO GOVT. 30 NOV 1935 LAW DEPT.

Subject.

Suits - (South Kanara) - Mangalore Sub Court - O.S.Nos. 136/33 and 27/34 - Mortgage money collected Mrs. Coses D'Sa Bai - Claim for refund.

ENCLOSURES.
No. .....
.....
Spare copies .....

Endorsement No. A. 5308/35

Station Madras, *Dated the* 30th November 1935

From

A.R.C. Westlake Esq., I.C.S.,
Secretary Land Revenue. Revenue Settlement, etc. Separate Revenue.
The Board of Revenue,

~~Resolution~~ ~~Reference.~~

E.F.Thomas Esq., C.S.I., C.I.E., I.C.S.,
Commissioner of Land Revenue.

Read the following:-

Letter from E.M.Gawne Esq., I.C.S., Collector of South Kanara No. Ref. A3-7354/28 dated 27th November 1935.

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Endorsement

Submitted to Government.

for Secretary.

To the Secretary to Government, Law (General) department with enclosures in original.

Copy to the Collector of South Kanara.

M.R.V./30-11-35.

30.11

Hg 3.12.35 V.C. 29.11.35

Very Urgent. South Kanara Collectorate Office.

Ref. A5 No.3354/28. Mangalore, dated 6th November

A 5308

From

E. M. Gawne, Esq, I.C.S.,

Collector of South Kanara.

BOARD OF REVENUE 29 NOV 1935 LAND REVENUE AND SETTLEMENT

The Secretary to the Board,

Land Revenue & Settlement,

Madras.

Sir,

Suits-- Mangalore--Sub Court--C. S. Nos. 136/33 and 97/34--Mortgage money collected from Mrs. Coses D'Sa Bai--Claim for refund--Orders requested.

Ref:- (1) Board's Ref. A. No. 3512/35-2 dated 7th September 1935 and

(2) G. O. No. 2924 Ms. Law (General) dated 11th September 1935.

Agreeably to the instructions contained in the G. O. cited above, the two suits, C. S. Nos. 133/32 and 23/34 on the file of the Sub Court, Mangalore, filed by Government for the recovery of certain mortgage money due to the late Draupadi alias Padmavathi Amma of Panjikal village, have not been withdrawn. The Sub Judge having allowed the Government to withdrew the suits unconditionally, no costs have been awarded to the defendants.

2. The above two suits related to the two mortgages--one executed by Achutha Pai and others and the other by Sheshagiri Rao. The third mortgage was by one Mr. Paul Andrew D'Sa, who is now dead. His widow Mrs. Coses D'Sa alias Tauro Bai, from whom the mortgage amount was demanded on behalf of Government readily agreed to pay the amount and has actually paid Rs.1278-11-6 as detailed in the margin, thus leaving a net balance of Rs.430/- under principal, on which interest runs at 8% per annum from

Date of Payment.	Amount paid to Government. Principal.	Interest.	Total.
28.9.31	-	632 8 0	632 8 0
19.5.32	449 7 6	50 8 6	500 0 0
19.12.32	120 8 6	25 11 0	146 3 6
Total.	570 0 0	708 11 6	1278 11 6

now
19.12.1932. This widow claims a refund of the amount, if by her to-
gether with interest at 12½ % per annum. The Government Pleader,
Mangalore, whom I have consulted, considered that the Government
have had the benefit of the money without the right therefor and re-
commended the repayment of the amount with interest at 6% per annum
on the principal and 12½% per annum on the arrears of interest, which
he says are the rates mentioned in the mortgage deed.

3. I do not agree with the Government Pleader. It cannot possibly
be said that in this case, Government collected the money without any
right, as both the petitioner and the Government Pleader seem to think.
On the contrary, all proper steps were taken to ascertain whether the
assets of the deceased were escheat or not and it was only when the
assets were declared escheat through the Agency of a competent Civil
Court under the provisions of Regulation VII of 1802, that the money
the mortgage was sought to be collected. The 'Implementation of Judg-
ment' was, in this case, not therefore something irregular or improper
for which the Government should be penalised.

4. Again, there are many occasions in which the Government hold
money of private parties and make refunds of that money subsequently
when it is found that the parties have a proper claim. But during the
period when that claim is being investigated and adjudicated, the Government
are not expected to allow interest to accrue on the amount, nor is any
made by parties for interest in such cases. It is also clear that the
Government, by having the use of the money, could not earn the interest
that is being asked for now. Without prejudice, I therefore propose to
pay the petitioner the amount actually collected by the Government with-
out interest; but her pleader says that the petitioner is willing to accept
ly the principal sum in full discharge of her claim. He, however,
that without prejudice his client will have no objection if the
principal amount provided the question of the right of receiving interest
is left open for future determination by Court or otherwise.

5. The Government Pleader, Mangalore, is agreeable to this arrangement.
But as the Government are not by this arrangement, getting the whole of the
claim, I propose to make the payment now, but to reserve the result of this

C.S.Nos.136/33 & 27/34 suits-filed by Upendra Kamthi and Pundalika Kamthi and two others respectively in the matter of this very mortgage amount--please see my Ref. A3 No. 7354/28 dated 21st November 1934 disposed of in B. P. Mis. No. 519 dated 6th February 1935. I request to be informed if the Board agrees with me in this matter.

6. The suits referred to above stand posted to 3rd December 1935. The claim petition of Mrs. Cocess D'Sa alias Taure Bai and the Mangalore Government Pleaders Ref. No. A.66/35 dated 28th October 1935 are enclosed in original for reference.

Your obedient servant,

Collector.

5

Very Urgent.

South Kanara Collector's Office,

Ref. A3 No.7354/28.

Mangalore. dated 27th November 1935.

From

E. M. Gawne, Esq, I.C.S.,

Collector of South Kanara.

To

The Secretary to the Board,

Land Revenue & Settlement,

Madras

Sir,

Suits-- Mangalore--Sub Court--C. S. Nos. 136/33 and 27/34--Mortgage money collected from Mrs. Coses D'Sa Bai--Claim for refund--Orders requested.

Ref:- (1) Board's Ref. A. No. 3512/35-2 dated 7th September 1935 and

(2) G. O. No. 2924 Ms. Law (General) dated 11th September 1935.

Agreeably to the instructions contained in the G. O. quoted above, the two suits, C. S. Nos. 123/32 and 23/34 on the file of the Sub Court, Mangalore, filed by Government for the recovery of certain mortgage money due to the late Draupadi alias Padmavati Amma of Panjikal village, have now been withdrawn. The Sub Judge having allowed the Government to withdraw the suits unconditionally, no costs have been awarded to the defendants.

2. The above two suits related to the two mortgages--one executed by Achutha Pai and others and the other by Sheshagiri Rao. The third mortgage was by one Mr. Paul Andrew D'Sa, who is now dead. His widow Mrs. Coses D'Sa alias Tauro Bai, from whom the mortgage amount was demanded on behalf of Government readily agreed to pay the amount and has actually paid Rs.1278-11-6 as detailed in the margin, thus leaving a net balance of Rs.430/- under principal, on which interest runs at 8% per annum from

Date of payment.	Amount paid to Government. Principal.	Interest.	Total.
28.9.31	-	632 8 0	632 8 0
19.5.32	449 7 6	50 8 6	500 0 0
19.12.32	120 8 6	25 11 0	146 3 6
Total.	570 0 0	708 11 6	1278 11 6

19.12.1932. This widow now claims a refund of the amount paid by her together with interest at 12% per annum. The Government Pleader, Mangalore, whom I have consulted, considered that the Government have had the benefit of the money without the right therefor and recommended the repayment of the amount with interest at 6% per annum on the principal and 12% per annum on the arrears of interest, which he says are the rates mentioned in the Interest Act.

3. I do not agree with the Government Pleader. It cannot properly be said that in this case, the Government collected the money without any right, as both the petitioner and the Government thought for some time. On the contrary, all proper steps were taken to ascertain whether the assets of the deceased were subject or not to the only charge these assets were declared exempt through the agency of the competent Civil Court under the provisions of Regulation VII of 1802, that the mortgage was sought to be collected. The 'intervention of the Government' was, in this case, not therefore something irregular or illegal for which the Government should be penalised.

4. Again, there are many cases in which the Government hold money of private parties and make refunds of that money subsequently when it is found that the parties have a proper claim. But during the period when that claim is being investigated and substantiated, the Government are not expected to allow interest to accrue on the amount, nor any claim made by parties for interest in such cases. It is also clear that the Government, by having the use of the money, could not earn the interest that is being asked for now. "Without prejudice", I therefore agreed to pay the petitioner the amount actually collected by the Government without interest; but her pleader says that she is not agreeable to receive merely the principal sum in full discharge of her claim. He, however, says that without prejudice his client will have no objection in receiving the principal amount provided the question of the right of receiving interest is left open for future determination by Court or otherwise.

5. The Government Pleader, Mangalore, is agreeable to this arrangement. But as the Government are not by this arrangement, getting absolved of the claim, I propose to make no payment now, but to await the result of the two

Law (General) Dept

C.No.7201-B

From the Board of Rev.,L.R.&,S.,Endt.No.A.5308/35-1. 30.11.35

Suits-Mangalore Sub Court- O.S.Nos.136/33 and 27/34-Mangalore Sub Court. - Refund of mortgage money collected from Mrs. Coses D'Sa Bai - Calim for refund with interest.

A.S.

In G.O.No.4918 L.G. d. 20.11.30, orders were passed declaring the properties left by the deceased Draupadi Amma of Panjikal in the South Kanara district, who died intestate, escheated to Government. In pursuance of this order, sanction for the institution of suits was sought for and obtained by the Collector in G.O.No.3728 L.G. d. 12.10.32 for the recovery of the amounts due by the following persons/on mortgage deeds noted in the margin* executed by them in favour of the deceased Draupadi Amma. Suits were accordingly instituted in O.S. Nos.123/32 and 23/34 in the court of the Sub Judge, Mangalore. The amount due to the deceased Draupadi Amma by the deceased Paul Andrew D' Sa, was collected by the Collector from his widow as detailed below:-

* (1) Achutha Pai & others
(2) Seshagiri Rao

Date of payment	Principal Rs	A	P	Interest Rs	A	P	Total Rs	A	P
28- 9-31	...			632	8	0	632	8	0
19- 5-32	449	7	6	50	8	6	500	0	0
19-12-32	120	8	6	25	11	0	146	3	6
Total	570	0	0	708	11	6	1278	11	6

There was no need to file a suit for the recovery of the amount referred to above, as the property paid the amount.

2/- Subsequently, suits were filed by claimants to the deceased's properties for recovery of the amounts due to the deceased by the mortgagors or their legal representatives impleading the Govt also as co-defendant as detailed below; and

he defence of the suits was also sanctioned by Govt.

O.S.No.in the Sub-Court Mangalore	Name of the plaintiff	Names of [illegible]
122/33	Pu[illegible] Karthi & others	[illegible] Govt
27/34	Do	[illegible] Govt.
37/34	Do	[illegible] Govt.
136/33	[illegible]endra Karthi	[illegible]

As the Collector reported in consultation with the Local Government Pleader that the Govt would not succeed in the suits and recommended that the suits might be withdrawn, the Government accepted his recommendation after consulting the Government Pleader, Madras, and issued orders accordingly in G.O.No.383 L.G. d. 2.2.1935.

3. In G.O.No.2924 L.G. d. 11.9.35, orders were passed permitting the withdrawal of suits filed by the Govt ~~cited~~ referred to para 1 above as it was reported that attempts at compromise failed and that the withdrawal would be desirable in view of the fact that the Government had already dropped the idea of contesting the suits in which the Govt had been impleaded as a co-defendant.

4. The Collector now reports that the suits in O.S. Nos,123/32 and 27/34 on the file of the Sub-Court, Mangalore, in which the Govt are plaintiffs have been withdrawn in pursuance of G.O.No.2924 L.G. d. 11.9.35 and that Messrs. Coses D' Sa from whom the amount of Rs.1,27[illegible]- 1-, was recovered as detailed in para 1 on the previous page, claims a refund of that amount together with interest @12½%. ~~8% on the principal and penal interest and @ 12½ % on the arrears of the interest due in accordance with the terms of the mortgage deed executed in favour of the deceased Drupadi Amma.~~ 4 ~~It may be noted here that~~ Messrs Coses D Sa ~~this lady~~ is a defendant (2) in para 2 in O.S.No.27/34 referred to in para 2 above and ~~that~~ this suit has been posted to 3rd December, 1935. The Govt. also have been impleaded as a co-defendant in the case.

The lady is entitled to interest @ 8% on the principal and 12½% on the arrears of interest

5. The Local Government pleader, who was consulted holds that the claim should be allowed while the due according to the terms of the mortgage deed. While the Collr's view is that Mrs. Coses D' Sa Bai is entitled only to the principal but not to either ordinary or penal interest as the amount lying with the Govt did not earn any interest and as the recovery of assets was only in accordance with the provisions of Regulation III of 1802 and under competent authority. The claimant's counsel is prepared to receive the principal without prejudice to claiming the interest due thereon according to the terms of the mortgage deed. The Collector would defer payment till the suits relating to this very amount, which have been posted to 3.12.35 are disposed of, since it would not make any difference in the postponement of payment if the Government are not be absolved from the payment of interest.

6. The Collr requests orders whether his proposal at A would be accepted. The Board has not offered any remarks.

The object of the Collector seems to be to await the Court's decision apparently, for the reason that any decision as to the payment of interest should be binding on the Government as the amount due by the executor Mr. Paul Andrews D'Sa, (deceased husband of Mrs Coses D' Sa) is now with the Government. It is presumed that the Collr will press before the Court his view point as to the payment of interest.

Submitted that ~~For orders whether~~ the Collr's proposal may be accepted. A draft order is submitted.

7. As the Board of Rev. has communicated a copy of the endt to the Collr, it is presumed that the Collr will apply for an adjournment of the suits, if he considers it necessary.

8. Rev. may see before circulation.

Circulation

8/2/35

BR 8/12

Pt-I

MV 2/12

JS

As the suit is said to be actually pending, postponement of the payment of the Principal (as suggested by the Collector) will not in any way increase the liability of the Govt - the proposal of the Collector may be accepted

C/L 3 12 35

Rev

L.G.No. 720/13-1 3.12.35.

Rev Dept

May be pursued & returned to Law (Genl)

3.12.35

3.12.35

Law (Genl)

Rev No. 1 3/12-35

12/5

Law (Govt)

A.L.

May ~~be circulated to the Cabinet~~ issue. The file may be circulated to the Cabinet after issue.

5/12/35

MV 3/12

BB 3/12

VC 3/12/35

H.R.E. KKR 4/12

- 6 DEC 1935 LAW DEPARTMENT

JOINT SECRETARY TO GOVT. 6- DEC 1935 LAW DEPARTMENT